

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:06-00165-01

FREDDIE EVANS, JR.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion, brought pursuant to 18 U.S.C. § 3582(c)(2), asking the court for a reduction in his sentence based on a subsequent reduction in the applicable sentencing guideline. (Doc. # 259). On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended, resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Standard consideration.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Orders and Statement of Reasons, and other matters of record. The court has also considered the applicable factors

under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Having reviewed the materials of record, the court has determined that the motion must be **DENIED**. The drug quantity attributed to defendant at sentencing was between 8 and 11 kilograms of powder cocaine. Accordingly, only powder cocaine, not cocaine base, was used in arriving at his sentence. Accordingly, the guideline range applicable to defendant has not been lowered as a result of the amendment. See United States v. Rodriguez, Nos. 10-20024-JWL, 12-02245-JWL, 2012 WL 2979373, *2 (D. Kan. July 19, 2012) ("The FSA and U.S.S.G. Amendment 750 impact offenses involving cocaine base, not offenses involving methamphetamine or other controlled substances.").

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 11th day of June, 2015.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge